

**BOARD OF MEDICINE
FULL BOARD MEETING**

MINUTES

OCTOBER 09, 2003

Dianne L. Reynolds-Cane, M.D., President, called the meeting of the full Board to order at 8:00 a.m., at the Department of Health Professions ("DHP").

MEMBERS PRESENT:

Dianne L. Reynolds-Cane, M.D., President
James F. Allen, M.D.
Robert P. Nirschl, M.D.
Kenneth J. Walker, M.D.
Jerry R. Willis, D.C.
Sandra Anderson Bell, M.D.
Harry C. Beaver, M.D.
Robert J. Bettini, M.D.
Carol E. Comstock, R.N.
Malcolm L. Cothran, Jr., M.D.
Stephen E. Heretick
Thomas B. Leecost, M.D., D.P.M.
Gary P. Miller, M.D.
Juan M. Montero, II, M.D.
Christine Ober Bridge
Sue Ellen B. Rocovich, D.O.
Clarke Russ, M.D.
Rev. LaVert Taylor

STAFF PRESENT:

William L. Harp, M.D., Executive Director
Ola Powers, Deputy Executive Director of Licensure
Karen Perrine, Deputy Executive Director of Discipline
Kate Nosbisch, Deputy Executive Director of Practitioner
Information
Robert Nebiker, Director, DHP
Elaine Yeatts, Senior Regulatory Analyst
Roscoe Roberts, Assistant Attorney General
Carmen M. Quinones, Recording Secretary

GUESTS PRESENT:

Stephen D. Rosenthal, Richmond Academy of Medicine;
Troutman Sanders; Ann Furniss, L.Ac., Acupuncture Society of Virginia; Karen Talbot, Virginia
Law & Government Affairs; Susan Ward, V.H.H.A.; Mike Jurgensen and Scott Johnson, Medical
Society of Virginia; Matthew Gainey, Pharm P., Purdue Pharma; Joyce Hawkins, VA Society of
Rad Techs; D. Love, R.A.M., and Paul M. Spector, DO, VOMA

ADOPTION OF AGENDA

Dr. Reynolds-Cane moved to adopt the agenda. The motion was seconded and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEMS

Scott Johnson, General Counsel for the Medical Society of Virginia, commented on agenda item #3 and delegation of decision making to board subordinates.

Stephen D. Rosenthal, with the Richmond Academy of Medicine, also commented on agenda item #3.

Ann Furniss, representing the Acupuncture Society of Virginia, and Karen Talbot spoke to item #1(c).

PRESENTATION OF PLAQUE – Joseph Kirkwood Allen

Dr. Harp presented a plaque to Mr. Allen, past board member and immediate past president, in recognition of his service to the Board.

NOMINATING COMMITTEE REPORT

Dr. Russ presented the Nominating Committee's slate of Dr. Reynolds-Cane for President, Ms. Comstock for Vice-President and Rev. Taylor for Secretary-Treasurer. Dr. Willis moved to accept the Nominating Committee's selections. The motion was seconded, discussed and carried unanimously. Mr. Allen, presented the gavel to Dr. Reynolds-Cane.

APPROVAL OF MINUTES – June 5, 2003 Meeting and September 12-13, 2003 Workshop

Dr. Rocovich moved to approve the minutes of the Full Board dated June 5, 2003. The motion was seconded and carried unanimously.

Dr. Bell moved to approve the minutes of the September 12-13, 2003, Workshop. The motion was seconded and carried unanimously.

REPORTS OF OFFICERS AND EXECUTIVE DIRECTOR

President

No report

Vice President

No report

Secretary/Treasurer

No report

Executive Director

Dr. Harp updated the Board on hiring for the Medical Review Coordinator position. He presented a letter from Blake O. Zobell, D.P.M. regarding the progress of the podiatric radiology course and examination. Dr. Harp reported on the use of laptops, including problems, training and additional expenses. Lastly, he informed the Board of the notification from DEA that physician assistants had lost authorization to write for schedule IV drugs for a period of time.

COMMITTEE REPORTSExecutive Committee – Dr. Reynolds-Cane

Dr. Cothran moved to accept the minutes of the Executive Committee dated August 1, 2003. The motion was seconded and carried unanimously.

Legislative Committee – Dr. Reynolds-Cane

Ms. Comstock moved to accept the minutes of the Legislative Committee dated September 26, 2003. The motion was seconded and carried unanimously.

Credentials Committee – James F. Allen, M.D.

Dr. Bettini moved to accept the minutes of the Credentials Committee dated August 1, 2003. The motion was seconded and carried unanimously.

Advisory Board on Physician Assistants – Mr. Fender, P.A.

In Mr. Fender's absence, Dr Harp asked the Board to accept the minutes of the Advisory Board on Physician Assistants dated September 12, 2003. Dr. Rocovich moved to accept. The motion was seconded and carried unanimously.

Advisory Board on Occupational Therapy – Barbara Gallagher, O.T.

In Ms. Gallagher's absence, Dr. Harp asked the Board to accept the minutes of the Advisory Board on Occupational Therapy dated September 11, 2003. Rev. Taylor moved to accept. The motion was seconded and carried unanimously.

Advisory Board on Respiratory Care – Bonnie McQuaid, RRT

In Ms. McQuaid's absence, Dr. Harp asked the Board to accept the minutes of the Advisory Board on Respiratory Care dated September 11, 2003. Dr. Beaver moved to accept. The motion was seconded and carried unanimously.

Advisory Board on Acupuncture – Jody Forman, MSW, L.Ac.

In Ms. Forman's absence, Dr. Harp asked the Board to accept the minutes of the Advisory Board on Acupuncture dated September 10, 2003. Dr. Bell moved to accept. The motion was seconded and carried unanimously.

Advisory Board on Radiological Technology – Peggy Heffernan, RT

In Ms. Heffernan's absence, Dr. Harp asked the Board to accept the minutes of the Advisory Board on Radiological Technology dated September 10, 2003. Dr. Bettini moved to accept. The motion was seconded and carried unanimously.

Advisory Board on Athletic Training – David Pawlowski

Mr. Pawlowski asked the Board to accept the minutes of the Advisory Board on Athletic Training dated September 9, 2003. Dr. Walker moved to accept. The motion was seconded and carried unanimously.

Committee of the Joint Boards of Medicine and Nursing – Dr. Bettini

Dr. Bettini moved that the Board accept the minutes of the Committee of the Joint Boards of Medicine and Nursing dated August 27, 2003. The motion was seconded and carried unanimously.

OTHER REPORTS

Board of Health Professions – Dr. Reynolds-Cane

Dr. Reynolds-Cane reported that the Board of Health Professions met on September 4, 2003. The main topics of discussion were the Sanctions Reference Study and a study of regulation of directors of Assisted Living facilities.

Assistant Attorney General – Mr. Roberts

Mr. Roberts stated that the appeal of Russell Carter, M.D. was dismissed by the Virginia Court of Appeals and the case reported in June, Kahn v. Nebiker and Harp, was dismissed. Mr. Roberts asked to defer his report on CCA's until discussion of that agenda item.

Department of Health Professions – Mr. Nebiker

Mr. Nebiker reported on DHP's efforts to disseminate information about HB 1441, the collection of Emergency Contact Information, the Prescription Monitoring Program, budgetary issues and therapeutic substitution of drugs by hospital pharmacies.

Podiatry Report – Dr. Leecost

Dr. Leecost had no report

Chiropractic Report – Dr. Willis

Dr. Willis had no report

NEW BUSINESS**#1 Status of Regulations and Regulatory Actions**

a. Review of Chart on Regulations – Ms. Yeatts provided a chart of regulatory actions for the Board's review.

b. Adoption of Proposed Regulation fee increase pursuant to HB 1441: 18 VAC 85-20-10 et seq. – Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic – Ms. Yeatts explained the need to adopt permanent regulations to replace emergency regulations regarding the increase of fees. Rev. Taylor moved to approve the proposed regulations providing for a fee increase. The motion was seconded, discussed and carried.

c. Adoption of proposed regulation on acceptance of candidacy status for Acupuncture Programs – Ms. Yeatts presented the fast-track regulatory action regarding acupuncture accreditation recommended by the Advisory Board on Acupuncture. She provided additional information as requested by the Legislative Committee on the length of time an acupuncture program is given to become accredited. Dr. Cothran moved to approve the proposed fast-track regulation for approval of applicants from candidacy programs. The motion was seconded and discussed. After some discussion, Ms. Yeatts suggested an amendment to the proposed amended regulation to read, "An applicant from an acupuncture program in a school or college that has achieved candidacy status from accreditation by ACAOM shall be eligible for licensure provided the program has subsequently been granted accreditation within three years of the applicant's graduation." Dr. Bell moved to accept Ms. Yeatts suggestion as a friendly amendment to the original motion. Dr. Bell's motion was accepted, seconded and discussed. The motion passed 17 to 1, with Dr. Russ opposed.

d. Adoption of proposed regulation for 30 to 45 days authorization to practice by applicants for certification in Athletic Training – Ms. Yeatts presented the proposed regulation on issuance of a 30-day authorization for practice as an athletic trainer as recommended by the Advisory Board on Athletic Training, as amended to 45 days by the Legislative Committee. Dr. Nirschl moved to approve the proposed amended regulation. The motion was seconded and discussed. After discussion, Dr. Allen moved to amend the original motion to add language specifying a reason for the authorization. Dr. Allen's motion to amend was accepted, seconded and discussed. Dr. Russ also asked for a letter of support from the applicant's employer. The regulation was amended to read, "Upon written request from the applicant and employer and with good cause shown, an applicant who provides documentation of current NATABOC certification and, if licensed or certified by another jurisdiction in the United

States, documentation that his license or certificate is current and unrestricted, may be granted authorization to practice as an athletic trainer for 45 days pending submission of all other required documentation and issuance of a certificate. At the discretion of the board, additional time, not to exceed 15 days, may be allowed to complete the application process.” The amended motion carried with a unanimous vote.

e. Adoption of NOIRA for Regulations Governing the Licensure of Nurse Practitioners Regarding Qualifications for Initial Licensure - Ms. Yeatts explained the need to adopt a NOIRA to address several issues related to the qualifications for licensure of nurse practitioners. Dr. Russ moved to accept the NOIRA to amend regulations governing nurse practitioners. The motion was seconded, discussed and carried unanimously.

f. Action to Grant 6-Month Extension to Respiratory Care Practitioners for Continuing Education Requirement in 2005 - Ms. Yeatts explained the problem regarding the requirement in regulation for respiratory care practitioners to attest to completion of continued learning activity beginning January 1, 2005 and presented the Advisory Board’s recommendation to grant a 6-month extension to licensees whose birth month falls January through June. Dr. Beaver moved to accept the recommendation. The motion was seconded and discussed. Dr. Russ offered an amended motion to grant an automatic 6-month extension to licensees for the entire renewal year in 2005. The motion was seconded, discussed and carried unanimously.

g. Report on the Process for the Promulgation of Regulations on Professional Ethics - Ms. Yeatts reported on the process for developing regulations for ethical standards for all professions regulated by the Board. There was no action necessary.

#2 Proposed Legislation for 2004 General Assembly

a. Consideration of Possible Legislation Authorizing Athletic Trainers to Possess and Administer Epinephrine – Ms. Yeatts reminded the Board of their action at the June Board meeting regarding approval of the portion of legislation that authorized possession and administration of certain topical Schedule VI drugs but declined to approve epinephrine for athletic trainers, wanting additional information on their education. Tim Laurent, Athletic Training Program Coordinator, Lynchburg College was present and responded to Board questions. Dr. Russ moved to endorse the use of epinephrine by athletic trainers in emergency situations. The motion was seconded, discussed and carried unanimously.

b. Consideration of DHP Legislative Proposal that Authorizes Boards to Delegate Fact-Finding Proceedings to Agency Subordinates – Ms. Yeatts presented draft legislation to amend Section 54.1-2400 of the Code of Virginia as approved by the Executive Committee, with amendments based on the Legislative Committee’s concern about the definition of the term “agency subordinate”. Dr. Cothran moved to support the amended proposed legislation. The motion was seconded and discussed. Dr. Russ opposed the amended proposed legislation and offered a substitute motion that the Board of Medicine removes itself from the process. The substitute motion was seconded and discussed. Dr. Russ withdrew his motion. The original motion by Dr. Cothran was on the floor and carried unanimously.

#3 Consideration of the Process and Case Categories Amenable to Confidential Consent Agreements

Ms. Perrine reviewed the background of confidential consent agreements and provided the recommendation from the Legislative Committee regarding the process and criteria. She asked the Board to approve the process and criteria as recommended or establish other criteria. Dr. Nirschl moved to accept the process as recommended by the Legislative Committee. The motion was seconded and discussed. Dr. Russ moved to recommend a change in the language of line one, paragraph two of the Policy of the Board of Medicine on the Use of Confidential Consent Agreements to read, "The determination as to the appropriateness of a confidential consent agreement shall be delegated to the President or his designee at the probable cause stage through a review and recommendation by the Executive Director or Medical Review Coordinator." The Board concurred that "appropriateness" included determining any violation or terms, and entering on behalf of the Board. The motion was seconded, discussed and carried 17 to 1, with Rev. Taylor opposed. Dr. Nirschl moved to accept the proposed and amended policy. The motion was seconded, discussed and carried. The original motion by Dr. Nirschl, with the recommended language carried 17 to 1, with Rev. Taylor opposed.

Dr. Nirschl moved to accept the Legislative Committee's recommendation for the types of cases that should be referred for a CCA. The motion was seconded, discussed and carried unanimously.

Dr. Allen moved to go into closed or executive session pursuant to Virginia Code section 2.2-3711(A)(7) for Board counsel advice regarding the Executive Committee's decision on Profile cases and what CCA's would contain. The motion was seconded, discussed and carried. Dr. Allen moved to go into open session. The motion was seconded, discussed and carried. Dr. Reynolds-Cane certified the closed session. Dr. Allen moved to confirm the previous decision of the Executive Committee with the exclusion of assessment of a monetary penalty. The motion was seconded, discussed and carried unanimously. Ms. Bridge moved that staff study available options for the inclusion of a fee in CCA's given the constraints of the administrative process and the fee structure as it exists and provide a report to the Legislative Committee and to the full Board. The motion was seconded, discussed and carried unanimously.

Dr. Russ moved that the Board of Medicine begin to look at the process to adopt regulations that require proof of submission of the Physician Profile for the renewal of license. The motion was seconded and discussed. The motion carried with a vote of 15 to 3. Dr. Reynolds-Cane, Dr. Willis and Ms. Bridge opposed.

#4 Date Certain for Enforcement of Athletic Training Certification

Dr. Harp explained the concern regarding the possible unlawful practice of athletic training and how the Board would deal with the issue. He asked the Board to accept the recommendation of the Advisory Board on Athletic Training to establish December 31, 2003 as the deadline for certification before taking action for unlicensed practice. Dr. Beaver moved to accept. The motion was seconded, discussed and carried unanimously.

#5 Schedule of Meetings for 2004

A schedule of meeting dates for 2004 was presented to the Board for approval. Dr. Russ moved to approve the meeting dates. The motion was seconded and carried. In addition, he asked to have the business meeting on Friday, Saturday for discipline cases and Thursday as an optional day for overflow. The motion was seconded, discussed and failed with a vote of 4 yes, 11 no and 1 abstain.

#6 Practitioner Information Update

Ms. Nosbisch presented the Practitioner Information update. She presented the Board with an alternative to a separate compartment for expired licenses as recommended by the Executive Committee in August. Ms. Comstock moved to accept the proposal with the language as presented. The motion was seconded, discussed and carried.

#7 Discipline Report

Ms. Perrine provided a report of discipline cases. On January of this year, the Board had 1435 open cases, at all stages (investigation, APD, IFC, etc.) Since January 1, 2003, approximately 975 complaints have been received by the Board. The Board closed approximately 1200 cases. Between June 5, 2003 and October 1, 2003, the Board held 21 informal conferences, 6 formal hearings, entered 13 pre-hearing consent orders and summarily suspended 5 licenses. Currently the Board has about 1250 open cases including 66 at APD, 580 at Enforcement, and 500 at Board level for probable cause review.

#8 Consent Items

Dr. Allen moved to adopt the consent items as listed. The motion was seconded, discussed and carried.

#9 Next Meeting

Dr. Reynolds-Cane announced that the next full Board meeting would be January 22 - 24, 2004. She asked Board members for their continued dedication and thanked everyone for all their hard work.

ADJOURNMENT

Dianne L. Reynolds-Cane, M.D.
President

William L. Harp, M.D.
Executive Director

Carmen M. Quinones
Recording Secretary